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December 21, 2010

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Docket No. AB-1065X
*Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and
Vanderburgh Counties, IN*

Dear Ms. Brown:

Indiana Southwestern Railway Co. ("ISW"), the party who seeks abandonment authority in the above-captioned abandonment notice of exemption proceeding, yesterday received in the mail a copy of an "Offer of Financial Assistance" ("OFA") filed by the Town of Poseyville, Indiana ("Town") in the above captioned proceeding. The OFA, dated December 17th but not yet shown on the Surface Transportation Board's ("STB") website as being officially filed, purports to file an OFA seeking to purchase the entire 17.2 mile rail line that is the subject of the above abandonment proceeding. No filing fee accompanied the OFA because the Town claims it is exempt from having to file a filing fee pursuant to 49 C.F.R. § 1002.2(e)(1). ISW hereby writes to request that the Board require the Town to file a filing fee for its OFA and for any further future filings in this proceeding that may require a filing fee, and consistent with past practice, refuse to further process the OFA until the filing fee is received.

The Town is correct that normally "[f]iling fees are waived for an application or other proceeding which is filed by a . . . local government entity." 49 C.F.R. § 1002.2(e)(1). However, the Town appears to be unaware of the Board's policy statement issued in Regulations Governing Fees For Service Performed In Connection With Licensing And Related Services – Policy Statement, STB Ex Parte No. 542 (Sub-No. 6)(STB served Dec. 6, 2000)("Policy Statement"). In the Policy Statement, the Board specifically stated that "[a]ny state or local government entity filing as an owner or proposed owner of a carrier. . . will not qualify for the

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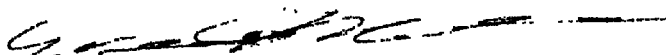
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fee waiver." Id., "Summary Section" and slip op. at 4. The Policy Statement explained that the purpose of the fee waiver was to ensure that government entities engaged in a non-profit activity designed for the public safety, health, or welfare should not have to pay a filing fee. It then later explained that government entities that own or propose to own a carrier are acting like private entities and should therefore pay the appropriate filing fee. Here, the Town is proposing to acquire an active rail line through the OFA process, and through such an acquisition, it will become a carrier subject to the STB's jurisdiction. This is so even if it intends to turn around and hire a third party to actually operate the rail line that it acquires. Onondaga County Industrial Development Agency - Acquisition And Operation Exemption - Lines Of Consolidated Rail Corporation, Finance Docket No. 32287 (ICC served July 7, 1994); City of Austin, TX - Acquisition - Southern Pacific Transportation Company, Finance Docket No. 30861(A) (ICC served Nov. 4, 1986). Accordingly, because the Town seeks to own and become a carrier, it does not qualify for a fee waiver.

Likewise, consistent with the Policy Statement, because the Town's filing and waiver request was filed without the appropriate fee, the Board should refrain from processing the OFA until the fee issue is resolved. Id., slip op. 4 & 5. Given the tight timeframes involved in OFA notice of exemption proceedings, the Town should have submitted the fee, the related filing and the waiver request simultaneously. If it had done so, the filing would have been processed immediately, the fee deposited, and the waiver request acted upon in due course. If the waiver had later been granted, the Town would have received a refund.

Finally, with respect to whether the Town is a financially responsible offeror, the Town cites to 49 C.F.R. § 1152.27(c)(1)(ii)(B), which provides that government entities are presumed to be financially responsible. ISW questions the application of that presumption to the Town of Poseyville. Other than citing to the presumption, the Town makes no effort to indicate that it can pay even its own value of the line; yet alone the value placed upon the line by ISW. In these times of significant strain on government resources, it is highly doubtful that the Town has the resources to acquire the line, and if it intends to have a third party provide the financing for it, then this Board should investigate the financial bona fides of such a third party, or perhaps that third party should be the true OFA offeror.

Sincerely,



William A. Mullins

cc: Parties of Record
Venetta Keefe
J. Michael Carr